IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

1. S.B. CIVIL WRIT PETITION NO.3519/2005-ANKITA GUPTA & ORS VS. MAHARSHI DYANAND SARASWATI UNIVERSITY, AJMER & ORS.

2. S.B. CIVIL WRIT PETITION NO.3708/2005-RISHI KUMAR SINGODIA & ANR VS. MAHARSHI DYANAND SARASWATI UNIVERSITY, AJMER & ORS.

3. S.B. CIVIL WRIT PETITION NO.3764/2005-GULSHAN KUMAR CHUGH VS. MAHARSHI DYANAND SARASWATI UNIVERSITY, AJMER & ORS.

UNDER ARTICLE 226 AND 227
OF THE CONSTITUTION OF INDIA.

Date of Order : 14th July ,2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Pushpendra Singh]
Mr.Darshan Paul]
Mr.B.N. Kalla], for the petitioners.

Mr. N.M. Lodha, AAG, alongwith Mr. S.M .Toshniwal, for the respondents.

REPORTABLE

BY THE COURT:

Heard learned counsel for the parties.

The grievance of the petitioners is that the paper setters have committed errors while giving correct answers to the questions set by them and therefore, they supplied wrong answers in the “key answer ” supplied for evolution of the marks of the students, who appeared in Pre-Medical and Pre-Veterinary Examinations held in Rajasthan. According to the petitioners answers of 16 questions are wrong in ' key answer'. The one answer consists of three marks and on giving wrong answer by the student, he gets one negative mark for each wrong answer. Therefore, in present test, a student who gave in fact, right answer, but that answer was treated as wrong answer because it is not as per the answers given in ' key answer' supplied to the University by the paper setter. According to learned counsels for the petitioners thereby in case, when a student even when gave right answer for one question still he is deprived from four marks for one question. In total for 16 questions, he looses 64 marks. It is also submitted that in view of the tight competition, as about more than 30,000 students have appeared for this examination, wrong marking for one question may put a student below in rank to number of students and thereby that student may not get the admission in the MBBS or Veterinary Courses and may also not get the college of his choice and at the place of his choice. Not only this, but in fact large number of meritorious students will be deprived from the admission in MBBS or Veterinary Courses. According

to learned counsels for the petitioners future of each and every student is not only important, but in case, he will be deprived from admission in such a technical course, it will cause trauma for life for the student and that frustration cannot be cured by any means and that frustration will be for whole of the life of the student.

Learned counsels for the petitioners further submit that since the pattern of examination is “multiple choice objective type test” therefore, there is exactness in the answer to each question. The entire process of evolution of the answer book is through latest technology as the answer books are examined by the computer and not manually. According to learned counsels for the petitioners the entire process of checking of the answer sheets can be computed within a period of maximum a day only. Since the examinations are “multiple choice objective type test”, therefore, there arises no question of ambiguity and it can be easily found out whether the answer given in the ' key answer' are correct or not as well as this also can be found out easily that whether the answers suggested by the petitioners to particular question are correct or not. Learned counsels for the petitioners submitted that the courts have interfered at least in four cases, which have come to the notice of the learned counsels for the petitioners and these four cases are, (i) Kanpur University & Ors Vs. Samir Gupta & Ors

(AIR 1983 SC 1230), (ii) Abhijit Sen & Ors. Vs. State of UP & Ors (AIR 1984 SC 1402), (iii) Convenor, MBBS/BDS Selection Board & Ors. Vs. Chandan Mishra & Ors (1995 Supp (3) SCC 77) and (iv) State of Orrisa & Ors Vs. Prajnaparamita Samanta & Ors [(1996) 7SCC 106].

It will also be relevant to mention here that this matter was placed before this Court on 8th July, 2005 and after hearing the learned counsel for the parties and after noting the arguments of learned counsels for the petitioners that even a single mark will affect a student because by a single mark, one can move up and down by 25 numbers in merit and since there are allegations that the petitioners' 16 answers have been wrongly taken to be incorrect answers by wrongly accepting the wrong answers as correct, therefore, the petitioners may have to suffer a lot and since Hon'ble the Apex Court held that educational standards are required to be maintained with full strictlness and no ineligible candidate should get admission in the course depriving the eligible candidates from admission and since according to the petitioners, the answers to the questions are exact one and will not require any detail inquiry and shall not have different opinion about correctness of the answer, therefore, this Court observed as under: -

> "It is true that this is quite technical matter where only experts can decide about correctness of answer. This is

> also an issue that a question may have two answers but prima-facie, this Court is of the opinion that the questions cannot have two totally opposite answers correct. Since in this case, it has bee alleged that the answers to the questions are like mathematical equations and according to learned counsel for the respondents no.1 and 2, that is not so, then this aspect can also be considered by only expert."

It was pointed by learned counsels for the petitioners that in identical circumstances in writ petition no.606/2005, the matter was referred to the expert body for opinion. Therefore, this Court referred 16 questions for which according to learned counsels for the petitioners answers in the "key answer" are incorrect to the Head of the Department of the respective subjects of the Jodhpur University and the Udaipur University with request to submit report for the questions, namely ;

(i) Whether the answers suggested by the petitioners of the question is correct or the answer given in the answer key issued by the respondent University are correct.

(ii) The experts may also point out if there is possibility of two answers for one question suggesting the answer of the petitioner as well as the respondent University correct.

(iii) The experts may also submit if both the answers are not correct.

(iv)The experts may also point out that there is possibility of one answer more correct and other answer less correct.

The report has been submitted by the learned Addl. Advocate General and as per the report, out of four questions answer for one question for Physics paper has been found to be incorrect by both the experts. For Chemistry paper, out of four questions, answer of two questions given in “key answer” were found to be incorrect by both the experts and for Biology paper out of eight questions, answers for three questions were found to be wrong in the “key answer” by experts. Thereby there are six answers wrong in the “key answer” in the opinion of the experts from the two Universities, out of sixteen questioned questions. Again it will be worthwhile to mention here that in Physics paper, question at S.No.1, according to expert from Jodhpur University, there is possibility of two answers- 'A' and 'B', whereas as per expert from the Udaipur University the correct answer is 'B', as given in the “key answer”. The answer of question at S.No.2 was found to be correct by both the experts. The answer at S.No.3 was found wrong by both the experts whereas for question at S.No.4, one expert's opinion is that answer given in the “ key answer” is correct, other says that, that is not correct. The different opinions have been given by the experts for the two answers of the subject-Chemistry; one supporting the answer in key

answer as correct and other contradicting it. For Biology paper, 8 questions were referred to the experts, three were found to be wrong in the key answer key and for remaining five, for two, the experts have contradictory opinions, one supporting the key answer as correct where other supporting the key answer as wrong.

Learned Addl. Advocate General appearing for the respondents no. 1 and 2 vehemently submitted that the writ petitions of the petitioners are not maintainable, firstly because of the fact that writ petitions which have been filed jointly are not maintainable as each student has his own grievance and he cannot join the issue when his own stand is not supported by co-petitioner. It is also submitted that when one of the students says that correctness of the answer of one question is not in dispute then the student joining with him cannot say that answer of that question is wrong. It is also submitted by the learned Addl. Advocate General that there were 300 questions for all the three papers (100 questions for each paper). Out of 300 questions, the petitioners by their best effort could find out only 16 questions of which according to them answers given in the “key answer” are wrong and now in view of the experts' opinion it is clear that the contentions of learned counsels for the petitioners is wrong and only answers of six questions have been opined by the experts to be wrong. It is also submitted that

the experts' opinion clearly reveal that they too are not in agreement for giving answers to the questions, therefore, in such circumstance, it will not be just and proper for this Court to accept the experts' report even for six questions for the purpose of discarding the answers given by the paper setter for the questions in the "key answer" because the paper setter also is an expert and his opinion can be said to be a first opinion of an expert for the answers given for the questions by him in the key answer. It was further submitted that the petitioners have projected their grievances out of proportion because of the simple reason that each and every student will not be benefited if the answer given by these experts in pursuance of the order of this Court is accepted and as correct and their marks are evaluated according to the answers given by the experts of the Jodhpur University and Udaipur University. According to Addl. Advocate General, not only this but even if the answers books of the petitioners are re-evaluated in accordance with the answers given by the experts from Udaipur University and Jodhpur University even then in one subject about 98% of the students will get the benefit of increase of four marks and by that there will be no change in the merit as all will get four marks. It is also submitted that the petitioners failed to disclose that total number of seats are 486 for the MBBS Course out of which 363 seats are for boys and 123 seats are for girls students. These seats of boys and girls are also distributed

amongst the students of General category, Scheduled Caste, Scheduled Tribe, OBC and others. Therefore, there is less possibility of change in position of any of the students even if the answer books are re-evaluated. It is also submitted that the petitioners though submitted that they may be put to an disadvantageous position, but that appears to be only imaginary and there is likelihood that even not 50% or more substantial number of students will get the admission in the Course of their choice in counseling. It is also submitted that the placement of a student in a particular college cannot be equated with total denial of the admission to the students and looking to the larger interest of completion of the process of the admission in time, if one or two persons or some of the students may have to suffer some inconvenience then that cannot be a ground for re-evaluation of all the copies of all the students as prayed by the petitioners in their writ petitions. It is also submitted that the persons who are in merit above the petitioners, neither have been impleaded as party nor some of them as representatives, have been impleaded as party in the writ petitions. Therefore, in case any order will be passed by this Court for re-evaluation of all the answer books or only of the students who are in merit then that will be an order against those persons whose merit is likely to be effected by the order of this Court.

The learned Addl. Advocate General further submitted that when there is no procedure for questioning the questions of the answers set out in the key answer then the procedure may not be framed by the order of the Court for application to the admission for the course of Medical and Veterinary subjects as it may become precedent for all years. For this learned Addl. Advocate General relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Promod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna and Ors [(2004) 6 SCC 714].

I considered by the submissions of learned counsels for the parties and perused the experts' opinion as well as the judgments cited by both the learned counsels for the parties.

It will be worthwhile to mention here that time schedule for completion of process of admission to the Medical and Veterinary Courses has been framed for the State of Rajasthan in pursuance of the directions issued by the Hon'ble Supreme Court in the case of Mridul Dhar (Minor) & Anr Vs. Union of India & Ors [(2005) 2 SCC 65]. In the case of Mridul Dhar (supra), Hon'ble Apex court after noticing what has been laid down by the Hon'ble Supreme Court in judgment delivered in the case of Medical Council of India Vs. Madhu Singh [(2002) 7 SCC 258]

wherein it has been held that "it has been made clear that no admission can be granted after the scheduled date and Hon'ble Apex Court directed the Medical Council of India to ensure that the examining bodies fix a time schedule specifying the duration of the course, the date of its commencement and the last date for the admission and further directed that different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, **counseling** and the like have to be completed within the specified time and **no variation of the schedule** so far as admissions are concerned shall be allowed. In case of any deviation of the institution concerned, action as prescribed shall be taken by MCI". The Hon'ble Apex Court also directed the State Governments, Universities, Medical and Dental Institutions in the country and all other authorities concerned to **strictly abide by the time framed for completion of each of the stages of admission process indicated in the time schedule**. The strict compliance of time schedule has been made more rigorous by the Hon'ble Supreme Court. It will be worthwhile to reproduced para 8.4 and 8.5 of the directives as referred in the judgment of Mridul Dhar's case (supra), which reads as under: -

> "8.4 In exercise of the powers conferred by the Hon'ble Supreme Court, the Medical Council of India or the Dental Council of India may direct that any student identified as having obtained admission after the last date for closure of

> admission be discharged from the course of study; or any medical or dental qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956 or the Dentist Act, 1948, as the case may be. The institution which grants admission to any student after the last date prescribed for the same shall also be liable to face such action as may be prescribed by the MCI or DCI.
>
> 8.5 The Time Schedule for completion of admission process as in the Annexure shall also be printed in the Bulletin of Information for the candidates or the Prospectus for admission to the concerned course. The candidates shall be clearly warned of the consequences of taking admission in any institution after the last date for closure of admissions."(emphasis supplied)

The Hon'ble Supreme Court in Mridul Dhar's case (supra) issued several directions for ensuring time declaration of the results of the even schools (10+2) and for providing the marks sheets to the students in time so that the students may not be deprived from getting admission in the appropriate courses because of late declaration of the results and further issued directions that time table mentioned in notification dated 25th Feb., 2004 issued by the Medical Council of India in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 shall be adhered to by all concerned including, States and Union Territories and the results of Medical and Dental Institutions shall be declared bu 10th June of each year and process of first round of State Level Medical, Dental College admission should be by 15th July a week before start of second round of counseling or allotment of seats under

All India Quota. The Hon'ble Supreme Court held that it shall be the responsibility of all concerned including the Chief Secretaries of each States, Union Territories and/or Health Secretaries to ensure compliance of the directions of the Hon'ble Supreme Court and requisite time schedule as laid down in the regulations and non-compliance would make them liable for requisite penal consequences. Not only this, Hon'ble the Apex Court directed that by 31st Oct., the State Chief Secretaries, Health Secretaries shall file a report in regard to the admission with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota.

The State has submitted an additional affidavit before this Court on 13th July, 2005 stating therein that in view of the directions of the Hon'ble Supreme Court for completion of the process of admission to the Medical Colleges, what steps have been taken by the State, have been given out by the Principal Secretary to the Government of Rajasthan in Higher Technical and Medical Education Department by filing affidavit dated 9th May, 2005. In this affidavit, the State Government, through Principal Secretary, informed the Hon'ble Supreme Court that Pre-Medical Test are scheduled to be held on 9th, 10th and 11th May, 2005 and the results of the said examination shall be declared before 5th June, 2005. The first round of counseling shall be

held on 14th, 15 and 16th July, 2005. The second round of counseling shall be held on 25th, 26th and 27th August, 2005.

It is no doubt true that merit cannot be compromised. It is also true that if a meritorious student is prevented from pursuing his studies that too, which has direct effect on his future then it will cause serious irreparable injury to that person and some times that may be incurable loss for that student. Therefore, the stake of student cannot be taken lightly. One of the aspects of maintaining the high standard of education is also having a strict time schedule for the courses and, therefore, the Hon'ble Supreme Court unambiguously directed that "necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time and no variation of the schedule so far as admissions are concerned shall be allowed". The Hon'ble Supreme Court in Mridul Dhar's case (Supra) affirmed the view taken in Madhu Singh's case, which provided "to strictly abide by the time frame for completion of each of the stages of admission process indicated in the time schedule".

In this case, this Court therefore, in its order dated 8th July, 2005 clearly observed that " to see that no injustice be caused to any of the students who have preferred writ petition by now and since there is

time yet for giving admission to the students in this course", therefore, to find out whether answer given in "key answer" are wrong for 16 questions and whether answers are so exact that there cannot be two opinion about the correct answer to the question, the opinion of the experts were sought.

Now, the answers have come before this Court and counseling is to start from today i.e. from 14.7.2005, therefore, the matter was heard and decided finally.

It is clear from the report of the experts that so far as contention of the petitioners that answers of 16 questions in the key answer are wrong, is not correct. It has also come on record that for other questions also, the two experts have different opinions as 10 answers of "key answer" were found right and for six questions the experts opined that answers of these six questions given in the key answer are wrong. These facts indicate only that what has been argued by learned counsel for the petitioners that the answers to the questions are like mathematical equation and there will not be any two opinions for one question, is also found to be wrong as there are different answers for number of questions by the experts. The argument of the learned counsel for the petitioners that all 16 answers in "key answer"

are wrong is proved from various text books prescribed/approved by the High expert body like NCRTE etc. Despite this contention, the report of the experts says that 10 answers out of 16 in "key answer" are correct. Therefore, if argument of learned counsel for the petitioners is accepted then opinion of these experts is against the answers given in those text books which are approved by NCRTE. In that view of the matter, for six questions also if the opinion of the two experts is the same, that straightway cannot be accepted unless the paper setter is given opportunity to explain that what he has given in the key answer is correct or not. Therefore, so far as the contention of the petitioners that writ petition shall not involve question of facts or determination by this Court has been found to be wrong.

Hon'ble the Supreme Court in the case of Kanpur University and ors. v. Samit Gupta and ors. (supra) held as under:-

> "It is true that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct."
>
> and also held:-
>
> "Where it is proved that the answer given by the students is correct and the key answer is incorrect the

> students are entitled to relief asked for. In case of doubt unquestionably the key answer has to be preferred. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."

Therefore, in this case, the petitioners by their own contention that the petitioners' stand about the correctness of the answer in the "key answer" is based upon the various text books, is not proved, rather the experts have opined that out of 16 answers, 10 are correct which contradicts the answer given in the text books. For six questions for which two experts opined that answer given in the "key answer" are incorrect, are also debatable in view of the fact that the two experts who submitted report before this Court are also not in agreement on correctness and incorrectness of the answers for all questions for which they have opined that there is possibility of both answers, one suggested by the petitioners and other given in the "key answer" is correct and further even for one question, at least both the experts had contrary opinion among them and, therefore, this Court as a matter of fact, finds that the "key answer" have to be preferred and because of the experts opinion for six questions, the correctness of the "key answer" cannot be doubted.

It has also been submitted by learned counsel for the petitioners that even if there is possibility of two answers for one question then the student cannot be made to suffer and he is required to be given bonus marks if total marks cannot be given to the students. I do not find any reason for asking the respondents to make exercise for re-evaluation of all the answers books which are more than 30,000 in the light of the answers given by these two experts who have opined that six of the answers given in the "key answer" are wrong. This Court makes it very clear that this Court has no doubt about the ability of the experts nor any doubt about the ability of the paper setter for accepting their reports and that there is possibility of paper setter to be correct. This Court is examining only that whether there is possibility of only doubt about the correctness of answer or in the opinion of experts there can be only one view that answer in key answer are wrong. This will also beneficial to judge whether this Court should interfere in the admission process by violating the direction of Hon'ble the Supreme Court for strict adherence of the time schedules on the ground of likelihood of extreme hardship to meritorious student.

The judgments relied upon by learned counsels for the petitioners delivered in the cases of (i) Kanpur University & Ors Vs. Samir Gupta & Ors (AIR 1983 SC 1230), (ii) Abhijit Sen & Ors. Vs. State of UP & Ors (AIR

1984 SC 1402), (iii) Convenor, MBBS/BDS Selection Board & Ors. Vs. Chandan Mishra & Ors (1995 Supp (3) SCC 77) and (iv) State of Orrisa & Ors Vs. Prajnaparamita Samanta & Ors [(1996) 7SCC 106] were given by the Hon'ble Supreme Court,but after that Hon'ble the Apex Court in not only Madhu Singh's case(supra) but in several other cases directed that time schedule for admission process in various courses should not be violated in any manner and even in some of the cases the Court did not permit the filling of the vacant seats after expiry of the time for filling the vacant seats. Meaning thereby, the Hon'ble Apex Court at the cost of keeping the seats vacant, did not allow the admission to the students after the expiry of the date of admission to the courses. It may appear to be a strong view of the Hon'ble Apex court and that strong view may be considered by some one causing hardship to some of the students but to correct the system as a whole, the hard steps are required to be taken and this will be a temporary phase because when system will be corrected then only high standards of the educational institutions will be maintained and which will ultimately give benefit to the public large. Hon'ble the Supreme Court as back as in the year 1983 in the case of Kanpur University vs. Samir Gupta (supra) was conscious of the fact exactness of answer for the questions may also be reason for mere challenges, therefore, Hon'ble the Supreme Court observed as under:-

> “ ..... in a system of 'Multiple Choice Objective type test', are must be taken to see that questions having an

> ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it."

In view of the recent decision of the Hon'ble Apex Court delivered in the case of Mridul Dhar (Supra), the time schedule provided in the process of admission to the Medical and Veterinary Courses is required to be strictly followed and this Court will also not permit the violation of the directions of the Hon'ble Supreme Court for completion of the process of admission stage-wise in time.

If the prayer of the petitioners is allowed then the respondents shall have to re-assess the answer books of more than 30,000 students and even if that evaluation of the answer books will be through computer only even then the process of first counseling cannot be completed by 17th of July, 2005. Not only this, but even if the students who have been selected, their answer books are re-examined in the light of the experts' opinion for six questions then as per the contentions of the petitioners themselves for variation of one mark, may move the student up and down by 25 numbers then the students could not find their place in the declared select list and the students will be deprived

to put forward their claim for re-evaluation of their answer books so as to get the merit over some of the students finding their names in the declared select list. So far as assessing the case of each individual petitioner with respect to the individual answers for the question, no time is left now, is an additional ground apart from the fact that this Court has already found that there exists no reason for re-evaluation of the answer books on the basis of the report submitted by two experts, which are not unanimously giving opinion, one for all questions and which creates doubt whether the answers to the questions as given out by the experts can be given precedence over the answers given by the paper setter.

In the facts, the State shall pay the nominal remuneration of Rs.10,000/- each to each expert who gave his opinion in this matter. The remuneration should be paid in 15 days.

In view of the above, all the writ petitions of the petitioners are dismissed.

(PRAKASH TAITA),J.

mlt/-